IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : October 28, 2006

1. Criminal Appeal No. 577-DB of 1997

Hansa, Sanjay and Dharma versus State of Haryana

2. Criminal Appeal No. 588-DB of 1997

Kapura alias Kapoor Singh versus State of Haryana

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : Ms. Baljeet Kaur Mann, Advocate for the appellants
Mr. Sunil Katyal, Deputy Advocate General, Haryana

Virender Singh, J.

Vide this judgment we are disposing of the aforesaid two appeals filed by four appellants (hereinafter to be referred as 'accused') against their conviction and sentence awarded by the learned Sessions Judge, Sonepat vide impugned judgment dated 28/30.7.1997. The conviction and sentence of each of them is as under:

Hansa

Under section 148 IPC	To undergo imprisonment for a period of two years.
Under section 302 IPC substantively	To undergo imprisonment for life and to pay a fine of Rs 5000/-, in default of payment of fine to further undergo RI for one year
Under section 323 read with section 149 IPC	To undergo imprisonment for a period of six months.

Sanjay, Dharma and Kapura

Under section 148 IPC	To undergo imprisonment for a period of two years each.
Under section 302/149 IPC.	To undergo imprisonment for life and to pay a fine of Rs 5000/- each, in default of payment of fine to further undergo RI for one year each.
Under section 323 read with section 149 IPC	To undergo imprisonment for a period of six months each.

All the sentences were, however, ordered to run concurrently.

Fine if recovered is ordered to go to the widow of the deceased Jai Singh, as compensation.

One Jugti, Sarpanch of the village was also booked with the aforesaid four accused but he died during trial.

Deceased in this case is Jai Singh son of Baru aged about 25 years. The case was registered on the statement of PW5 Ram Rattan son of

Surja resident of village Tharu (another village). The occurrence had taken place in village Kabirpur (falling within the jurisdiction of Police Station Sadar Sonepat) on 3.1.1993 at 10.00 AM. On the basis of the statement (Ex. PQ) of aforesaid Ram Rattan recorded at 11.30 AM by SI Khazan Singh PW10 in General Hospital, Sonepat, formal FIR Ex. PQ/2 was registered on the same day under sections 302,323, 148, 149 IPC.

The case of the prosecution is that 4/5 days prior to 3.1.1993, Phool Kumar son of Baljit was admitted in Batra Nursing Home, Sonepat where Krishan had gone to verify his well being. The accused Kapura alias Kapoor Singh had met Krishan outside Nursing Home. Kapura was on his scooter. He dashed his scooter against Krishan. An altercation ensued between Kapura and Krishan and Krishan informed about this to his father Tara Chand who remonstrated the accused. Both the parties were challaned under security proceedings and subsequently bailed out. It is then alleged that on account of intervention of the respectables of the village, the matter was settled but the accused had been nourishing a grudge and on 3.1.1993 at about 10.00 AM, when Jai Singh, Ram Rattan (the complainant) Sarjo, Kela, Dharmo, Premo and Birmati were sitting outside the house of Baru and were talking with each other, accused Dharma, Sanjay, Kapura armed with lathies and Hansa armed with gandasi and Jugti (died during trial) who was empty handed arrived there. Jugti raised a lalkara that they had now an opportunity to teach a lesson to the complainant side. It is then alleged

that Hansa accused gave gandasi blow on the head of Jai Singh. Dharma, Kapura and Sanjay accused who were armed with lathies also caused injuries to Dharmo, Sarjo, Kela, Birmati and Premo. The lady-folk picked up brick bats and threw at them. It is then alleged that the complainant and Sham intervened and separated both the sides. The injured were removed to General Hospital, Sonepat, where Jai Singh was declared dead.

The investigation of the present case was conducted by Inspector Khazan Singh PW10, who after receipt of the ruqa from General Hospital, Sonepat went there and recorded statement Ex. PQ of Ram Rattan PW which was sent for the registration of the formal FIR. Thereafter he prepared the inquest report Ex. PJ/1 for the purpose of getting the post mortem examination. A cot which was blood stained was taken into possession by him vide recovery memo prepared at the spot. He then inspected the place of occurrence and in the presence of Ram Rattan and Sham lifted the blood stained earth from there which was taken into possession vide separate memo Ex. PK/1. Rough site plan Ex. PK/2 was prepared at the spot. On 11.1.1003, Hansa, Sanjay and Kapur Singh alias Kapura were arrested. Upon the disclosure statements Ex. PX suffered by Hansa, Ex. PR suffered by Sanjay and Ex. PS suffered by Kapura, blood stained gandasi from Hansa and two lathies (not blood stained) were recovered from Sanjay and Kapura. These were also taken into possession vide recovery memo Ex. PS/1, Ex. PR/1 and Ex. PX/1. Accused Dharma

was arrested on 20.1.1993 and upon his disclosure statement Ex. PT, a lathi was recovered which was also taken into possession. After the completion of the investigation all the accused were challaned.

The charge sheet reveals that accused Hansa was charged under section 302 IPC substantively whereas Sanjay, Dharma and Kapura were charged under sections 148, 302 read with section 149 and 323 read with section 149 IPC. As stated above, Jugti their co-accused had already died.

The prosecution in order to substantiate the charges has examined the following witnesses:-

Anil Kumar (PW1) has prepared the scaled site plan Ex. PA.

Dr. Promila Jain (PW2) had radiologically examined Kela, Dharmo, Premwati and Sarjo on 4.1.1993 and as per her report, the aforesaid injured had not received any grievous injury. She had also proved X-ray films. In her cross-examination she had stated that Hansa accused was radiologically examined on 6.1.1993 and she found fracture of left parieto temporal region. She had also proved the report in this regard. She had also examined Sanjay son of Om Parkash, Siri Bhagwan son of Bansi, Khazani wife of Mahabir and did not find any fracture on their person.

Dr. O.D.Sharma (PW3) had conducted the autopsy on the dead body of Jai Singh on 3.1.1993 and found the following injuries on his person:-

1. An incised wound of the size 10 cm x 1 cm x bone deep. Margins of the wound were clean cut when seen under magnification. On further exploration, underlying bone i.e. Left parietal bone was sharply cut. The wound was present on the left parietal region of the scalp. On opening the skull, the brain cavity was having blood clots. Brain matter was found lacerated.
2. An incised wound of 1 cm x 1/2 cm x 1/2 cm present on the posterior aspect of left fore-arm, 4 cm below the left elbow. Clotted blood was present in the muscle mass.

According to the opinion of this doctor, the injuries on the person of Jai Singh were possible by gandasi allegedly recovered from Hansa.

Dr. Subhash Mathur PW4 had medico legally examined Kela wife of Tara Chand and found two lacearated wounds. He had proved MLR Ex. PK. On the person of Premwati one lacerated wound and one abrasion were noticed. Copy of her MLR was proved as Ex. PK/1. On the person of Dharmo wife of Baru one lacerated wound was found. Her MLR is Ex. PK/2. MLR of Birmati another injured is Ex. PK/3 whereas MLR of Sarjo wife of Piare Lal was exhibited as Ex. PK/4. This doctor has also proved the ruqa sent by him to the police. He has also stated that on

3.1.1993, he had also examined Hansa accused and found two lacerated wounds. He had proved his MLR as Ex. PL. On the person of Sanjay accused, this doctor had noticed one lacerated wound and his MLR was proved as Ex. PL/1. On the person of Khazani this witness has noticed one lacerated wound and reddish contusion. Her MLR was also proved. He has also proved the ruqa sent by him to Police Post, General Hospital, Sonepat informing about the admission of the aforesaid persons. This witness has further deposed that possibility of injuries by lathies on the persons of Kela, Premwati, Dharmo, Sarjo and Birmati cannot be ruled out and Dharmo and Sarjo might had suffered brick bat injuries. The said doctor on 3.1.1993 had examined Siri Bhagwan and detected one lacerated wound. He also ruled out that this injury could be the result of fall.

Ram Rattan PW5 is the complainant-FIR lodger. He reiterated whatever was stated by him in his initial statement Ex. PQ.

Kela injured appeared as PW6 and Birmati injured as PW7.

Prem Singh PW8 is a witness before whom accused had suffered a disclosure statement whereupon recoveries of gandasi and lathies were effected.

Inspector Samay Ram PW9 was SHO of Police Station Sadar Sonepat. He had recorded statement of Anil Kumar Draftsman, one or two other police officials of formal nature. Final report under section 173 Cr.P.C. was also prepared by him.

SI Khazan Singh PW10 is the Investigating Officer. The investigation conducted by him is also indicated by us in the preceding paras.

The plea taken by the accused as emerges from their statements recorded under section 313 Cr.P.C. is that the complainant party was aggressor and they had caused injuries to them and in their defence they had also given them injuries. In defence they had re-called Dr. Subhash Mathur who deposed that on 3.1.1993, he had examined Siri Bhagwan sons of Bansi and found one lacerated wound.

Khazani wife of Mahabir was examined as DW1 who deposed that her father-in-law Jugti (since expired) was Pardhan of five villages and Jai Singh, Baru, Dhamo, Premo were jealous of Jugti being Pardhan of five villages. She then stated that Kapura was beaten by Krishan one day prior to the present occurrence and on the date of occurrence Siri Bhagwan, Hansa and Sanjay were sitting with her when Jai Singh, Dharmo, Premo Kiran and Sarjo etc. appeared with lathies and dandas and caused injuries to them. She has further stated that when Kapura accused was beaten by Krishan, Mahabir had reported the matter to the police and both the parties were challaned under security proceedings. On the date of occurrence, Jai Singh (since deceased) had raised a lalkara that they would teach a lesson for reporting the matter to the police about the incident relating to Kapura and Kishan upon which Hansa accused asked Jai Singh that he should not pick

up a quarrel over a petty matter but Jai Singh inflicted blows to Hansa and when Hansa had fallen down she inflicted Phawra blow on the person of Jai Singh in their safety. Thereafter Jai Singh had left the spot and Kela caused injuries to her and she also reciprocated. Siri Bhagwan had inflicted certain injuries on the complainant side and he too had received injuries in this occurrence. It is then stated by this witness that on the date of occurrence, Jugti and Kapura had come to the court in connection with bail of Mahabir and Dharma was not present at the time of occurrence.

After appreciating the evidence, the learned trial court has convicted and sentenced all the accused as stated herein above. Hence, this appeal.

We have heard Ms. Baljeet Kaur Mann, learned counsel for all the appellants and Mr. Sunil Katyal, learned Deputy Advocate General, Haryana. With their assistance, we have also gone through the entire evidence and other relevant documents from trial court records.

The main attack launched by Ms. Mann on the prosecution is that in fact the complainant was the aggressor as the motive was in their bosom to open an assault on the accused and in this occurrence, Hansa, Sanjay (accused herein) and Khazani and Siri Bhagwan had received injuries as is clear from the medical evidence on record. The injuries on the person of Hansa is on the head which ultimately turned out to be grievous. The complainant side is not explaining the injuries on the person of two

accused and two others (not arrayed as accused) and this flaw in itself is enough to infer that the complainant side is intentionally suppressing the genesis of the present occurrence. The learned counsel in order to develop her case on this aspect states that once origin of the occurrence is intentionally suppressed by the complainant, the defence plea taken up by the accused assumes importance and in the case in hand, Smt. Khazani DW1 who admittedly had received injuries in this occurrence has put forth a specific defence asserting that when Hansa accused was injured by Jai Singh (since deceased) and had fallen on the ground she took a Phawra and gave injuries to Jai Singh. The complainant party is silent about the presence of Smt. Khazani as is evident from the testimony of PWs namely Ram Rattan, Kelo and Birmati PW5 to PW7 whereas she was examined after receiving injuries on the date of occurrence itself. Therefore, the defence as set up by the accused is strengthened from the aforesaid weakness. These factors alone should be considered enough for discarding the case of the prosecution in its entirety, the learned counsel so contends.

Ms. Mann then submits that even if the case of the prosecution as already set up is taken to be true on the face of it, it cannot be said that all the accused herein had the common object viz to commit murder of Jai Singh who had received only one injury at the hands of Hansa and from the totality of facts and circumstances it can be said that except Hansa accused, the other had the common object to cause injuries only to the complainant

party and not beyond that. Therefore, their conviction under section 302 read with section 149 IPC is not sustainable.

Ms. Mann in the same strain goes on to contend lastly that in the present set of circumstances even the conviction of Hansa accused under section 302 IPC is not proper and he may be convicted under section 304 Part-II IPC holding that at the most he had the knowledge that his act was likely to cause death.

On the basis of the aforesaid submissions, Ms. Mann prays for acquittal of all the accused or in the alternative, diluting the sentence.

Mr. Katyal, the learned State counsel controverts the averments advanced by Ms. Mann and submits that all the accused including Jugti (since dead) had gone to the house of Jai Singh where he and other injured persons were already present. They all were armed with different weapons including gandasi and opened the attack causing injuries to many persons of the complainant side. From these facts, the common object of accused can be inferred comfortably. According to the learned State counsel, once the un-lawful assembly is formed then all the members of the said assembly are vicariously liable for the act of other and in the present case Hansa who was allegedly armed with gandasi gave such a forceful blow on the head of Jai Singh which ultimately proved to be fatal and within short span of time he was declared dead by the doctor immediately after his arrival in the hospital. According to the learned State counsel all the accused have also

caused injuries to the ladies after giving injury to Jai Singh and therefore, their conviction under sections 302/149 IPC as already recorded deserves to be confirmed. The learned State counsel then submits that even if the prosecution has not properly explained the injuries on the person of two of the accused, the same will not affect the case of the prosecution as each case has to be judged on its own facts and the case in hand speaks volumes of active participation of all the accused and therefore, their conviction as recorded deserves to be confirmed.

In order to demolish the case of the prosecution, Ms. Mann sets store by non-explanation of the injuries on the person of Hansa and Sanjay accused. In the initial statement Ex. PQ, Ram Rattan complainant does not say a word about the injuries on the person of the accused. When stepped into witness box he, however, stated that the complainant side had pelted brick bats on the accused in their self defence and was confronted with his previous statement (Ex. PQ) on this aspect. PW6 Kela wife of Tara Chand had stated in her examination-in-chief that the complainant side had pelted brick bats on the accused side in self defence. She was not confronted with her previous statement on this aspect. The reason for this appears to us is that in her cross-examination she stated that she did not make any statement to the police. Birmati wife of Rajinder PW7 was also confronted on this aspect with her previous statement Ex. DC where the throwing of brick bats was not mentioned. We are also conscious of the fact that doctor had sent

ruqa to the police with regard to the medico legal examination of Hansa, Sanjay (accused herein), Khazani and Siri Bhagwan.

The question whether the prosecution is obliged to explain the injuries sustained by the accused in the same occurrence and whether failure of the prosecution to so explain would mean that the prosecution has suppressed the truth and also the origin and genesis of the occurrence was referred to a three Judge Bench of Hon'ble Apex Court in **Ram Sunder Yadav vs State of Bihar** 1998(4) RCR (Criminal) 54, in which their Lordships while referring to the other judgments of the Hon'ble Supreme Court held that the prosecution is not obliged to explain injuries on the person of accused in all cases and in all circumstances and it depends upon the facts of each case. In this regard another latest judgment of Hon'ble Apex Court rendered in **Shankar Narayan Bhadolkar vs State of Maharashtra** 2004 (2) RCR (Criminal) 508 can also be referred to.

From the aforesaid settled legal position it can be said that non-explanation of injuries can assume importance only as per the facts of each case and where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can sift the truth from falsehood, the mere fact that the injuries are not explained by the prosecution, cannot by itself be a sole basis to reject such evidence, and consequently the whole case.

In the case in hand except Hansa who has received one injury on the head which ultimately turned out to be grievous as per the radiological examination, the other injuries on the person of Sanjay accused or as a matter of Khazani and Siri Bhagwan are minor and of superficial nature which, in our view, are not going to affect the case of the prosecution. Therefore, an attempt made by Ms. Mann to dislodge the case of the prosecution on this aspect turns out to be hollow.

We are appreciating the case of the prosecution yet from another angle. As per the scaled plan Ex. PA house of Jugti is shown in front of flour mill of Baru. House of Hansa, Dharma and Kapura are not depicted in the said site plan. Sanjay accused is son of Parkash and Parkash is son of Jugti. Krishan allegedly had an altercation with Kapura accused one day prior to the occurrence is nephew of Baru as is clear from the cross-examination of Khazani wife of Mahabir (the accused side). Baru and Tara Chand are two real brothers and Jai Singh deceased was son of Baru. Relation of Jugti with Hansa, Dharma and Kapura has not been projected anywhere either by the prosecution or by the accused. Dharma accused is shown to be resident of Sonepat. However, the other accused are resident of village Kabirpur. All this goes to show that all the accused had initially assembled at one place i.e. in the house of Parkash son of Jugti shown in front of the place of occurrence and thereafter they proceeded towards the flour mill of Baru. The occurrence had allegedly taken place in an open

space outside the flour mill of Baru as is depicted in scaled site plan Ex. PA. There is hardly any distance between the house of Parkash son of Jugti and place of occurrence. The ladies who were injured at the hands of complainant party are also from the family of Tara Chand and Baru. The case set up by the complainant side is that they were sitting in the street in front of house of Baru. In villages, a small flour mill (chakki) is run from the house itself. Meeting of all the accused at a particular point and then proceedings towards the house of Baru Ram is a circumstance from which we can comfortably observe that all the accused including Jugti (since dead) after forming an un-lawful assembly had assaulted the complainant side and in that eventuality, even if they had received some injuries at the hands of the complainant, the said fact would be of no help to them. Khazani and Siri Bhagwan might have appeared at the scene in between and received some injuries. Therefore, the defence set up by the accused that Jai Singh received injury at the hands of Khazani (DW) is neither here nor there. In our view, accused side had made an attempt to take advantage by producing her as defence witness for the reason that her presence is not shown by the complainant side. We, therefore, reject the defence plea being not appealing to the judicial conscience.

On the basis of the evidence before us, we are now assessing as to whether all the accused before us can be convicted for the main offence under section 302 IPC with the aid of section 149 IPC. Admitted position

is that there is only one injury on the person of Jai Singh since deceased and the said injury is attributed to Hansa accused who was allegedly armed with a gandasi. No doubt as per Dr. O.D.Sharma PW3 who had conducted the autopsy on Jai Singh stated that there were two injuries on his person but the second injury which is in the shape of incised wound of the dimension of 1 cm x 1/2 cm x 1/2 cm on the posterior aspect of left fore-arm, 4 cm below the left elbow could be possible if Jai Singh had lifted his left hand to save himself. The main injury, in fact, is also on the left parietal region. All other injuries on the person of other ladies who were present in front of the house of Baru are simple in nature caused by lathies. The factual position which now emerges from evidence before us is that the accused who were armed with lathies had not touched Jai Singh (since deceased) at all. If we go by the substantive statement of Ram Rattan, he in order to improve the case of the prosecution with regard to applicability of section 149 IPC for the main offence of murder attributed lalkara to Jugti accused (since deceased). He was however, confronted with his previous statement to that effect. Therefore, from the totality of facts and circumstances, especially the fact that Hansa accused attacked Jai Singh first of all on his head and other accused who were armed with lathies started beating the ladies present there, it can comfortably be said without doubt that an unlawful assembly was formed in this case but not with the common object of committing the murder of Jai Singh so as to hold every accused

vicariously liable for the main charge of section 302 read with section 149 IPC. Therefore, the case of Sanjay, Dharma and Kapura alias Kapoor Singh on the basis of injuries caused by them can very well be segregated to maintain their conviction only under section 323 read with section 149 IPC observing that they had common intention to cause simple hurt only to the complainant side and not for the offence punishable under section 302 read with section 149 IPC as already recorded. We hold accordingly.

So far as Hansa accused is concerned, he was allegedly armed with a gandasi and gave forceful blow on the head of Jai Singh. Jai Singh was son of Baru. Krishan who had an altercation with Kapura, is nephew of Baru. The grievance mainly was against Baru's family. Immediately after reaching the house of Baru where the complainant party was sitting in front of their house Hansa wielded Gandasi blow aiming at the head of Jai Singh. From the established facts, it can be said that he intended that injury. As already discussed, the said injury has caused an incised wound of the size of 10 cm. The autopsy indicates that underlying bone (left parietal bone) was sharply cut which has caused laceration in brain matter as well. Jai Singh died on the same day as he was brought dead in the hospital. As per the opinion of the doctor of autopsy, the said injury has been held to be sufficient to cause death in the ordinary course of nature.

In a latest judgment of Hon'ble Supreme Court rendered in

Arun Nivalaji More vs. State of Maharashtra, 2006(4) RCR (Criminal) 19, their Lordships while dealing with sections 299 and 300 IPC observed in detail in para no. 11 as under:-

> "11. First it has to been seen whether the offence falls within the ambit of section 299 IPC. If the offence falls under Section 299 IPC, a further enquiry has to be made whether it falls in any of the clauses, namely, clauses 'Firstly' to 'Fourthly' of Section 300 IPC. If the offence falls in any one of these clauses, it will be murder as defined in Section 300 IPC, which will be punishable under section 302 IPC. The offence may fall in any one of the four clauses of Section 300 IPC yet if it is covered by any one of the five exceptions mentioned therein, the culpable homicide committed by the offender would not be murder and the offender would not be liable for conviction under Section 302 IPC. A plain reading of Section 299 IPC will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause the knowledge of the offender which is relevant and is the dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death

is caused is done-

"(i) with the intention of causing death ; or

(ii)with the intention of causing such bodily injury as is likely to cause death; or

(iii)with the knowledge that the act is likely to cause death"

If the offence is such which is covered by any one of the clauses enumerated above, but does not fall within the ambit of clauses Firstly to Fourthly of section 300 IPC, it will not be murder and the offender would not be liable to be convicted under Section 302 IPC. In such a case if the offence is such which is covered by clauses (i) or (ii) mentioned above, the offender would be liable to be convicted under Section 304 Part-I IPC as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death "where intention is the dominant factor. However, if the offence is such which is covered by clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part-II IPC because of the use of the expression " if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily

injury as is likely to cause death "where knowledge is the dominant factor."

It was further observed as under:-

" The expression "the offender knows to be likely to cause death "occurring in clause Secondly of Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the word 'knowledge' is – the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. In the context of criminal law the meaning of the word in Black's Law Dictionary is as under:-

"An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact.

It is necessary.... to distinguish between producing a result intentionally and producing it knowingly, intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not fore known as certain or even probable. Conversely, there

may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired but being itself an object of repugnance rather than desire, and therefore not intended."

In Blackstone's Criminal Practice the import of the word 'knowledge' has been described as under:-

> "Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that it is so although, unlike intention, it is of no relevance whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."

The Law Commission of United Kingdom in its 11th Report proposed the following test:

> "The standard test of knowledge is – Did the person whose conduct is in issue either knows of the relevant circumstances or has no substantial doubt of their existence ?"

[See Text Book of Criminal Law by Glanville Wiliams (p. 125)]

Therefore, having regard to the meaning assigned in criminal law the word "knowledge" occurring in clause Secondly of Section 300 IPC imports some kind of certainty and not merely a probability.

While altering the conviction from section 304 Part-I to section 302 IPC, their Lordships while judging the scope of clause Thirdly of section 300 IPC observed as under:-

'The words' "intention of causing death" occur in clause Firstly and not in clause Thirdly. An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient to cause death in the ordinary course of nature. This is also borne out from illustration (c) to Section 300 IPC which is being reproduced below:-

"(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder although he may not have intended to cause Z's death."

In the aforesaid judgment, their Lordships while considering the applicability of clause Thirdly of section 300 IPC also referred to the authority **Virsa Singh vs State of Punjab,** AIR 1958 SC 465. In another latest judgment of Hon'ble Supreme Court, rendered in **Raj Pal and others vs State of Haryana** 2006(3) RCC 209, it is observed that the test laid down by **Virsa Singh**'s case (supra) for the applicability of clause 'thirdly' is now ingrained in our legal system and has become part of rule of law.

We after recapitulating the entire scenario, on the basis of evidence before us, are of the considered view that the injury inflicted by Hansa accused was clearly intended by him and it was not accidental or un-intentional injury. From the established medical evidence, the said injury was sufficient in the ordinary course of nature to cause death. Therefore, in these circumstances, there is no escape from the conclusion that the offence committed by him clearly falls within the mischief of clause 'thirdly' of clause 300 IPC punishable under section 302 IPC simpliciter for which he has been charged substantively. Ordered accordingly.

As a sequel to the aforesaid discussion, the net result which now surfaces is that Criminal Appeal No. 577-DB of 1997 and Criminal Appeal No. 588-DB of 1997 are partly allowed, conviction of Sanjay and Dharma accused in Criminal Appeal No. 577-DB of 1997 and of Kapura alias Kapoor Singh accused in Criminal Appeal No. 588-DB of 1997 under

section 302 read with section 149 IPC is hereby set aside whereas their conviction under section 323 read with section 149 IPC is maintained. The conviction of the aforesaid three accused under section 148 IPC is also maintained. The sentence awarded to them under both the counts shall remain as it is. However, conviction and sentence of Hansa accused (in Criminal Appeal No. 577-DB of 1997) under section 302 substantively and for section 148 IPC and 323 read with section 149 IPC as already recorded by the learned trial court is confirmed.

Both the appeals stand disposed of accordingly.

Necessary steps shall be taken by the concerned authorities for taking the accused in custody for serving remainder of their substantive sentence, if already not undergone.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

October 28 , 2006
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Mr. Sunil Katyal, Deputy Advocate General, Haryana

Virender Singh, J.

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